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TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PORT CARLING CORPORATION,

Opposer,

v.

JULIE SOMERS,

Applicant.

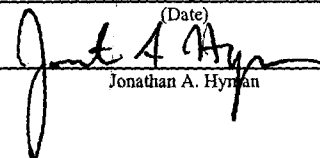
)
) Opposition No. 91,152,840

)
) Serial No.: 76/255,860

)
) I hereby certify that this correspondence and all marked
) attachments are being deposited with the United States
) Postal Service as first-class mail in an envelope
) addressed to: Assistant Commissioner for Trademarks
) 2900 Crystal Drive, Arlington, VA 22202-3514, on

)
) June 6, 2003

)
) (Date)

)
) 
)
) Jonathan A. Hyman

OPPOSER'S NOTICE OF RELIANCE IN THE OPPOSITION
UNDER 37 C.F.R. § 2.120

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514



06-10-2003

U.S. Patent & TM Office/TM Mail Rcpt Dt. #22

ATT: BOX TTAB NO FEE

Dear Sir:

Opposer, Port Carling Corporation, hereby makes of record, pursuant to 37 C.F.R. § 2.120(j)(3)(i), the following:

1. Opposer's First Request For Admissions.

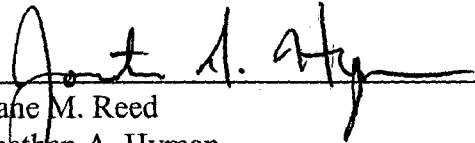
Opposer submits herewith, attached as Exhibit A, a copy of Opposer's First Request For Admissions which were served on Applicant on March 28, 2003. Applicant has failed to timely file Answers to Opposer's First Request For Admissions. An extension of time to file such an Answer was not granted to, or even sought by Applicant. Accordingly, Applicant has not responded to Opposer's First Request For Admissions. The failure to respond to the Request For

Admissions is respectfully submitted to indicate admission by Applicant of the requested admissions.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 6.6.03

By: 

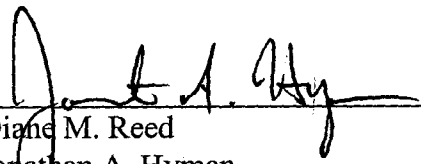
Diane M. Reed
Jonathan A. Hyman
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Opposer
PORT CARLING CORPORATION

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060603

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **OPPOSER'S NOTICE OF RELIANCE IN THE OPPOSITION UNDER 37 C.F.R. § 2.120** upon Applicant's counsel by facsimile and by depositing one copy thereof in the United States Mail, first-class postage prepaid on June 6, 2003, addressed as follows:

Rakesh M. Amin, Esq.
WEAVER & AMIN
217 North Jefferson Street, Suite 602
Chicago, Illinois 60661


Diane M. Reed
Jonathan A. Hyman
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Opposer
PORT CARLING CORPORATION

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060603

EXHIBIT A

THIGHM.047M

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PORT CARLING CORPORATION,

Opposer,

v.

JULIE SOMERS,

Applicant.

) Opposition No. 91,152,840

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06-10-2003

U.S. Patent & TMO/c/TM Mail Rpt Dt. #22

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS NOS. 1-24

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, and the applicable Federal Rules of Civil Procedure, Applicant is hereby required to admit or deny, in writing and under oath, each of the following Request to Admit:

Applicant is hereby notified that pursuant to Fed. R. Civ. P. 37(c), if a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36 and, if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requester may apply to the court for an order requiring the other party to pay for the reasonable expenses incurred in making that proof, including reasonable attorneys' fees.

INSTRUCTIONS AND DEFINITIONS

The following definitions and instructions shall apply to each of the requests for admission herein:

A. The term "Applicant" shall mean JULIE SOMERS and any present or former officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor, successor, or related company either within the United States or a foreign country.

B. The term "Opposer" shall mean Port Carling Corporation, its owners, attorneys, officers, agents and employees, including, but not limited to, Ms. Suzanne Somers.

C. The term "you" shall mean the party or person to whom the Interrogatory is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Request for Admission is propounded has the right to or does control or direct any activities.

D. The terms "and" and "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all responses which might otherwise be construed to be outside its scope.

E. The singular as used herein shall include the plural.

F. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

G. The term "Applicant's Mark" shall mean the mark that is the subject of U.S. Trademark Application Serial Number 76/255,860.

H. The term "Opposer's Marks" shall mean and refer to all marks relied on by Opposer in the Notice of Opposition.

REQUESTS

REQUEST NO. 1:

Applicant is not currently using the mark as shown in Application Serial Number 76/255,860 in connection with "greeting cards, Christmas cards, occasion cards, art prints, art print reproductions, comic strips, cartoons, gift wrapping paper, and other related paper products, namely, stationery, note pads, bookmarks and mailing labels."

REQUEST NO. 2:

Applicant has not used the mark as shown in Application Serial Number 76/255,860 in connection with each of the goods listed in its application, namely, "greeting cards, Christmas cards, occasion cards, art prints, art print reproductions, comic strips, cartoons, gift wrapping paper, and other related paper products, namely, stationery, note pads, bookmarks and mailing labels."

REQUEST NO. 3:

Applicant did not offer for sale "greeting cards, Christmas cards, occasion cards, art prints, art print reproductions, comic strips, cartoons, gift wrapping paper, and other related paper products, namely, stationery, note pads, bookmarks and mailing labels," in connection with the mark



prior to March 16, 2001.

REQUEST NO. 4:

Applicant did not offer for sale "greeting cards, Christmas cards, occasion cards, art prints, art print reproductions, comic strips, cartoons, gift wrapping paper, and other related paper products, namely, stationery, note pads, bookmarks and mailing labels," in connection with the mark SOMERSEASONS prior to March 16, 2001.

REQUEST NO. 5:

Applicant did not sell "greeting cards, Christmas cards, occasion cards, art prints, art print reproductions, comic strips, cartoons, gift wrapping paper, and other related paper products, namely,



stationery, note pads, bookmarks and mailing labels," in connection with the mark prior to March 16, 2001.

REQUEST NO. 6:

Applicant did not sell "greeting cards, Christmas cards, occasion cards, art prints, art print reproductions, comic strips, cartoons, gift wrapping paper, and other related paper products, namely, stationery, note pads, bookmarks and mailing labels," in connection with the mark SOMERSEASONS prior to March 16, 2001.

REQUEST NO. 7:

Applicant did not advertise and promote "greeting cards, Christmas cards, occasion cards, art prints, art print reproductions, comic strips, cartoons, gift wrapping paper, and other related paper products, namely, stationery, note pads, bookmarks and mailing labels," in connection with the mark



prior to March 16, 2001.

REQUEST NO. 8:

Applicant did not advertise and promote "greeting cards, Christmas cards, occasion cards, art prints, art print reproductions, comic strips, cartoons, gift wrapping paper, and other related paper products, namely, stationery, note pads, bookmarks and mailing labels," in connection with the mark SOMERSEASONS prior to March 16, 2001.

REQUEST NO. 9:

Applicant knew about Ms. Suzanne Somers before adopting Applicant's Mark.

REQUEST NO. 10:

Applicant knew about Ms. Suzanne Somers before filing an application for Applicant's Mark.

REQUEST NO. 11:

Applicant knew about the use of Opposer's Marks before adopting Applicant's Mark.

REQUEST NO. 12:

Applicant knew about the use of Opposer's Marks before filing an application for Applicant's Mark.

REQUEST NO. 13:

Applicant's Mark and Opposer's Marks both contain the word "SOMERS."

REQUEST NO. 14:

Applicant's Mark and Opposer's Marks both contain the word "SOMERS" combined with an additional "S" word and do not use a double "SS."

REQUEST NO. 15:

Applicant's goods, and Opposer's goods may be promoted in the same channels of trade.

REQUEST NO. 16:

Applicant's goods, and Opposer's goods may be promoted to the same class of consumers.

REQUEST NO. 17:

The documents produced in response to Opposer's First Request For Production Of Documents And Things are authentic.

REQUEST NO. 18:

There is a likelihood of confusion between Applicant's Mark and Opposer's Marks.

REQUEST NO. 19:

Applicant did not conduct a search for possibly conflicting marks prior to Applicant's adoption of Applicant's mark.

REQUEST NO. 20:

No one on Applicant's behalf conducted a search for possibly conflicting marks prior to Applicant's adoption of Applicant's mark.

REQUEST NO. 21:

Applicant conducted a search for possibly conflicting marks prior to Applicant's adoption of Applicant's Mark.

REQUEST NO. 22:

A search for possibly conflicting marks was conducted on Applicant's behalf prior to Applicant's adoption of Applicant's Mark.

REQUEST NO. 23:

Applicant's search for possibly conflicting marks disclosed the presence of Opposer's Marks.

REQUEST NO. 24:

Opposer is the senior user of Opposer's Marks, as against Applicant's use of Applicant's Mark.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 3-28-03

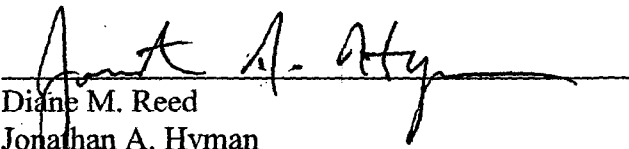
By: 

Diane M. Reed
Jonathan A. Hyman
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2040 Main Street
Fourteenth Floor
Newport Beach, CA 92614
(949)760-0404
Attorneys for Opposer,
Port Carling Corporation

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Opposer Port Carling Corporation's First Request For Admission upon Applicant by depositing one copy thereof in the United States Mail, first-class postage prepaid on March 28 2003, addressed as follows:

Ms. Julie Somers
31 Jonquil Drive
Guntersville, Alabama 35976


Diane M. Reed
Jonathan A. Hyman
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street
Fourteenth Floor
Newport Beach, CA 92614
(949)760-0404
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